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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/498 /2008 - CU[DB] Date 24/09/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S G.B.TRADING COMPANY
2, BHAGWAN DAS ROAD, N DELHI.

M/S G.B.TRADING COMPANY Appellant
Vs
C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of Final order No. C/348- 2008 CU[BR] dated 28.08.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
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3 S.D.R
4 J.C.D.R.
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
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Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 498 of 2008

(Arising out of order-in-appeal No. 9/Cus/Appl/DLH-IV/2008 dated 05.06.2008 passed by the Commissioner of Central Excise (Appeals), Delhi-I)

DATE OF HEARING : 28.08.2008
DATE OF DECISION : 28.08.2008

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (T)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure)Rules, 1982 ?.	
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	
3.	Whether their Lordships wish to see the fair copy of the Order ?	
4.	Whether Order is to be circulated to the Departmental Authorities?	

M/s G.B. Trading Co. .... **Appellant**
(Rep by Sh. Priyadarshi Manish & Ms. Anjali Manish, Advocates)

VERSUS

CCE, Delhi-IV .... **Respondent**
(Rep. by Sh. Sumit Kumar, DR)

CORAM : HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (T)

Final ORDER NO. C/348/08

PER M. VEERAIYAN :

This is an appeal against the order of the Commissioner (Appeals) No. 9/Cus/Appl/DLH-IV/2008 dated 05.06.2008.

2. Heard both sides. The relevant facts, in brief, are as follows:

(a) The appellant imported 88 numbers of old and used photo copiers of 'Canon' brand and declared value of Rs. 10,62,757/- supported by invoices. The import of old and used photo copier machines required licence and they did not have the licence. The services of Chartered Engineer were requisitioned and who after examination of the consignments, machine-wise, gave a detailed report vide Certificate No. DKT/CE/53/07-08 dated 05.03.2008 wherein he estimated the value as US $ 28,500 as against the price declared as US $ 26,175/-;

(b) The original authority took note of the report of the Chartered Engineer and followed the value estimated by the Chartered Engineer in respect of 12 old photo copiers and in respect of others he relied on higher value recorded in NIDB data. He accordingly enhanced the value to Rs. 19,60.778/-, taking recourse to Rule 9 of the Customs Valuation

Rules; he confiscated the goods and imposed redemption fine of Rs. 17,93,622/-. He also imposed a penalty of Rs. 2 lacs. The confiscation was ordered and penalty imposed mainly on the ground that the appellant has not obtained the required licence for the import of photo copier;

(c) The Commissioner (Appeals) concurred with the order of the original authority.

3. The learned advocate submits that more or less identical issue has been decided by the Tribunal vide final order no. C/304/08 dated 05.08.2008 in Customs Appeal No. 485 of 2008 filed by **M/s A.M. Impex** and accordingly seeks that value estimated by the Chartered Engineer should be adopted for duty calculation and that the redemption fine and penalty should be reduced. He also submits that they have incurred heavy demurrage and the goods are yet to be cleared in view of the heavy redemption fine and penalty imposed.

4. The learned DR apart from reiterating the findings of the Commissioner (Appeals) submits that the Department has rightly rejected the transaction value and adopted the value of comparable goods as found in NIDB data with due regard to the brand name, year of manufacture and other relevant details. He also submits that for certain categories of photo copiers, as NIDB data was not available and the value as estimated by the Chartered Engineer has been adopted. He seeks upholding of the order of the Commissioner (Appeals).

5. We have dealt with substantially the same issue in the case of **M/s A.M. Impex vs CCE, Delhi-I** (supra). The relevant portion of the order is reproduced below :

> **"We have carefully considered the submissions made from both sides. As licence is, admittedly, required for import of photocopiers, their confiscation adjudged is upheld. However, we hold that the enhancement of the value is not justified. We feel that no two consignments of second-hand photocopiers can be easily compared and therefore to adopt the value based on NIDB data for imported consignments with out actually comparing the conditions of the second-hand photocopiers in cases covered by NIDB to those in the present case is not proper. We find that neither the original authority nor Commissioner (Appeals) has given any reason as to overlook the detailed report of Chartered Engineer which contained the relevant details machine-wise and certified that the value declared was reasonable and fair. Therefore, we hold that the declared value which was found to be fair and reasonable by the Chartered Engineer has to prevail over NIDB data relating to other imports of photocopier."**

6. In the light of above, we direct that the value as determined by the Chartered Engineer should be adopted for the purpose of payment of duty. We uphold the confiscation of the goods for having been imported without obtaining the licence required. However, taking into account the entire facts and circumstances of the case including the demurrage incurred by the appellant so far, we allow the appellant to redeem the goods on reduced redemption fine of Rs. 3

lacs (rupees three lacs only). The penalty imposed is reduced from Rs. 2 lacs to Rs. 1 lac (rupees one lac only).

7. The appeal is disposed of in the above terms.

(Dictated and pronounced in the open Court on the 28th day of August, 2008)

(JUSTICE S.N. JHA)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Golay